

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:19-cr-10080-NMG-ALL

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5
6 UNITED STATES OF AMERICA

7
8 vs.

9
10 DAVID SIDOO, et al

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13
14 For Hearing Before:
15 Magistrate Judge M. Page Kelley

16 Arraignment

17
18 United States District Court
19 District of Massachusetts (Boston)
20 One Courthouse Way
21 Boston, Massachusetts 02210
22 Monday, April 29, 2019

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25 Official Court Reporter
United States District Court
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1 P R O C E E D I N G S

2 (Begins, 10:40 a.m.)

3 THE CLERK: Today is Monday, April 29th, 2019,
4 and we are on the record in Criminal Case Number
5 19-10080, the United States versus David Sidoo, et al.
6 Would counsel please identify themselves for the record.

7 MR. ROSEN: Good morning, your Honor, Eric
8 Rosen, Leslie Wright, and Justin O'Connell for the
9 government.

10 THE COURT: Good morning.

11 MR. SCHUMACHER: Should I go first, your
12 Honor? Good morning, your Honor, David Schumacher for
13 Defendants Amy Colburn and Gregory Colburn.

14 THE COURT: Good morning.

15 MR. BEIRNE: Good morning, your Honor, Eoin
16 Beirne for Defendant Elisabeth Kimmel.

17 THE COURT: Good morning.

18 MR. LOUCKS: Good morning, your Honor, Michael
19 Loucks for Marci Palatella.

20 THE COURT: Good morning.

21 MS. MINER: Good morning, your Honor, Tracy
22 Miner for Homayoun Zadeh.

23 THE COURT: Good morning.

24 MR. THEODOROU: Good morning, your Honor,
25 Nicholas Theodorou for Robert Zangrillo.

1 THE COURT: Good morning.

2 MR. PIROZZOLO: Good morning, your Honor, Jack
3 Pirozzolo for William McGlashan.

4 THE COURT: Good morning.

5 MR. O'CONNOR: Good morning, your Honor, Brien
6 O'Connor and Joan McPhee for Doug Hodge.

7 THE COURT: Good morning.

8 MS. THOMPSON: Good morning, your Honor, I'm
9 Melinda Thompson for Diane and Todd Blake.

10 THE COURT: Good morning.

11 MR. TRACH: William Trach for Mossimo
12 Giannulli, your Honor.

13 THE COURT: Good morning.

14 MR. KOTLIER: Jonathan Kotlier and John
15 Littrell for defendant Michelle Janavs.

16 THE COURT: Good morning.

17 MR. LATTRELL: Good morning, your Honor, John
18 Lattrell specially appearing for Reuben Cahn for I-Hsin
19 Chen.

20 THE COURT: Okay, good morning to you.

21 MR. KATZ: Good morning, your Honor, Aaron
22 Katz for Elizabeth Henriquez and specially standing in
23 for Manuel Henriquez.

24 THE COURT: Okay, good morning.

25 MR. PABIAN: Michael Pabian standing in for

1 Martin Weinberg of behalf of David Sidoo.

2 THE COURT: Good morning.

3 MR. KENDALL: Good morning, Mike Kendall for
4 John Wilson.

5 THE COURT: Good morning.

6 MR. KELLY: Good morning, Brian Kelly, Joshua
7 Sharp on behalf of Defendant Gamal Abdelaziz.

8 THE COURT: Good morning. Wow. Okay, that's
9 everyone.

10 Okay. So good morning again and, um, you know the
11 rule doesn't quite say how we do an arraignment in the
12 absence of a defendant and, um, I'm inclined to just not
13 verbally go through the arraignment with counsel and
14 have you enter a plan on your client's behalf, but if
15 anyone wants us to do that, um, 19 times, we're happy to
16 do that. I don't know if anyone has an opinion about
17 that.

18 So I think we will just consider this to be an
19 arraignment. I have allowed each of the defendants to
20 waive their appearance. I'm going to consider that
21 counsel has entered a plea of not guilty on behalf of
22 their client here on the second superseding indictment,
23 which was filed on April 9th, 2019. Hearing no
24 objection to that.

25 So the initial status conference is set for June

1 3rd at 11:00 a.m. And I think given the issues that
2 we've had with the protective order and discovery, that
3 that's a pretty quick date. I'm not quite sure what
4 counsel will be able to do with the discovery between
5 now and then. But I'm still inclined to keep that date
6 just because I think it's, um -- everyone has notice of
7 it, if things arise in the meantime, close enough to
8 that date, we can just handle them at that time, and so
9 I'm going to keep that date on the calendar.

10 So I know that, um, some of you are already
11 appearing on behalf of multiple defendants and on behalf
12 of other attorneys, I'm happy for that to happen at the
13 status conferences. I would prefer that local counsel
14 appear, if someone's going to appear, and not have
15 someone else cover for them. And if I think some
16 counsel -- I think one defendant does not have local
17 counsel, their counsel may appear by phone if they wish
18 to.

19 My hesitance -- I'm hesitant to allow a lot of
20 people to appear by phone at once because in my
21 experience you can't really understand people and
22 they're interrupting each other and you can run into
23 problems with that. So I prefer not to have people
24 appear by phone unless you have to, but obviously that's
25 an option for people.

1 So, um, if there's no objection I'm going to --
2 because we gave counsel quite a bit of leeway in filing
3 the waivers, I'm going to exclude the time from the date
4 of the indictment until the initial status conference of
5 June 3rd, and I note the local rule excludes that time
6 anyway. But I'm going to also do it in the interests of
7 justice given the problems we've had with discovery.

8 So first I'd like to take up the motion for the
9 protective order. Just for housekeeping purposes, the
10 government filed a motion, Number 317, and I think,
11 unless the government objects, I'm going to deny that as
12 moot given the subsequent things that have happened.
13 Also Attorney Weinberg filed a Number 323, a motion for
14 an addendum, and I'm going to deny that as moot because
15 I note that he then joined in the later motion.

16 So with regard to, um, Number 366, which is a
17 motion for a protective order -- and Exhibit 1 I'm going
18 to assume is agreed to by all defendants.

19 Are there any defendants who want to tweak that or
20 disagree with what it's asking for? Yes.

21 MR. BEIRNE: Your Honor --

22 THE COURT: And just for the purpose of the
23 record, since there's so many people, if you could just
24 identify yourself when you speak, please.

25 MR. BEIRNE: Thank you, your Honor. Eoin

1 Beirne for Elisabeth Kimmel.

2 I represent that the second protective order that
3 was filed was the exhibit to the motion that was filed
4 on Friday. Almost all defendants joined in that motion.
5 I can represent now that all defendants do join today in
6 request that the Court handle that second proposed
7 protective order. We did all agree with the version
8 attached to the joint status report, but we weren't able
9 to come to agreement with the government about all of
10 the provisions, so we do request that that second
11 protective order be the one that the Court enters.

12 THE COURT: Okay, and so why don't I hear the
13 government on the parts of that order, which is Exhibit
14 1 to 366, that you do not agree to?

15 MR. ROSEN: Judge, first of all, I want to
16 thank Eoin Beirne for being very flexible, we arrived at
17 a pretty solid agreement, a protective order that I
18 think addresses all the needs in terms of allowing each
19 defendant within this case and the Ernst case to
20 adequately prepare for trial and to, um, confront any
21 potential witnesses and share discovery amongst both
22 themselves and the defendants. I think that's set forth
23 in the first protective order, the one filed, I believe,
24 in 365.

25 I first want to note, Judge, in sort of opposing

1 that paragraph, is that I understand that these
2 defendants are in one case, there's a bunch of coaches
3 in the second case before Judge Talwani, and, you know,
4 the first point is just symmetry between the protective
5 orders. It's the same discovery largely, though I give
6 little tweaks and bobs amongst it, but largely it's the
7 same, and it would be very difficult to enforce two
8 slightly-different protective orders amongst the two
9 cases considering that discovery is largely the same.

10 This protective order here is needed, um, this is
11 -- the discovery here is different from really any other
12 case I've litigated, um, primarily because it contains
13 highly confidential information both in terms of
14 obviously financial records, e-mails, wiretap
15 recordings, consensual recordings and the like, but it
16 also involves people's children, and I think we can all
17 agree that that should be kept at -- that should be at
18 least tightly controlled. People with children, for
19 example, not just in academic records, but also in
20 health records, mental health records, and essays that
21 people -- that kids have written for colleges, some of
22 which contain, um, details of abuse, details of parents
23 living after divorce, things like that, that, um, we
24 believe is properly subject to a protective order. And
25 I think the defendants probably would agree to that as

1 well. As I said, the protective order, I think, allows
2 for proper dissemination within the defense team within
3 the defendants.

4 I think -- the problem which I think the
5 government has is that the addendum, the one paragraph
6 that they've chosen, would undermine the protections
7 afforded by that, um, protective order because of how
8 this case is charged. It's a conspiracy. All the
9 defendants are charged as -- it's a "hub" technically,
10 it's called a "hub and spoke conspiracy," but the
11 evidence is related to each one of them and not just to
12 amongst themselves.

13 So when we ask about, you know, carving out a
14 provision that allows for dissemination for any action
15 taken by an alleged co-conspirator with respect to the
16 defendant or any of the defendants' family members, the
17 government's answer really is "All of the actions taken
18 by co-conspirators relate to the defendant." It would
19 essentially undercut and eviscerate the protective order
20 that's, um, that's been agreed to.

21 Now I can understand if there was some underlying
22 need for this provision, but there is none. It's not
23 articulated at all in defendants' motion, it just says
24 "So we can use the materials as they see fit." Is that
25 for other litigation? Is that for, you know, litigation

1 with schools? I don't know. The point is that the
2 evidence that the government provides are government
3 discovery materials, it doesn't apply to any materials
4 that they can't obtain on their own, but the government
5 discovery materials should be used for the case at large
6 and not used simply as they see fit. I think the
7 paragraph is too broad, it eviscerates the protective
8 order, and for that reason I ask your Honor to deny the
9 proposed addendum.

10 THE COURT: So if I could just ask you, with
11 regard to that phrase, the way I read -- well, first of
12 all, just to back up a minute.

13 I understand this is a conspiracy but I think more
14 so than in other conspiracies many of these
15 co-conspirators are limited in their contact with one
16 another. So, for example, I know there are some parents
17 who had contact with each other, but in general I think
18 this is a conspiracy where the parents are having
19 contact with Mr. Singer and his agent and very
20 particular people at a certain school and no one else.
21 So I mean I understand the government's theory of the
22 conspiracy, but I do think, um, the spokes -- not to get
23 into the metaphor of the wheel, but the spokes are quite
24 isolated from the other spokes by and large.

25 So with that in mind, the way I read this is, um,

1 the primary materials are defined: "With respect to
2 each individual defendant, of any discovery materials
3 that relate to any action taken by an alleged
4 con-conspirator with respect to the defendant or the
5 defendant's family members." And so, for example, the
6 alleged co-conspirator might be Mr. Singer who, the
7 actions that he -- the discovery that relates to his
8 communications with the parents would then sort of be
9 owned by that parent and that it would not be under a
10 protective order.

11 And what I'm concerned about here is just
12 comparing this to a regular case where, if one had been
13 charged by oneself, there wouldn't be any of this,
14 because it's one's own child. You know I think that the
15 fear here is that one parent is going to out another
16 parent's child in using the discovery in a way that's,
17 um, I think we all agree we don't want to see happen.

18 So if in fact it's just the co-conspirators
19 actions with regard to that parent or the parent's child
20 and we adhere to that very strictly, does --

21 Yes?

22 MR. ROSEN: If I could, your Honor? Without
23 addressing this sort of, you know, the interaction
24 between the different spokes, um, one of the issues
25 here, for example -- and let me just give you the

1 example of the University of Southern California, or
2 USC, there are multiple e-mails between Singer and
3 Dr. Heinal, another co-conspirator that's referenced not
4 only, um -- they reference more than one child, so they
5 made a list of 10 childs -- 10 children. Some of the
6 parents that have been indicted here have pled guilty --
7 or will plead guilty, but others have not. So it would
8 effectively out them as people who benefited from an
9 athletic admissions system without giving them any
10 opportunity to defend themselves.

11 What I would suggest, if your Honor is so
12 inclined, I think that the defense -- once they've
13 reviewed the discovery and see how sort of interwoven it
14 is amongst themselves, maybe they can then come back to
15 the Court and provide a carve-out maybe for just
16 materials that only reference them or their children, I
17 think that would be more amenable. But the problem is
18 if it's any action taken by a co-conspirator it reflects
19 many kids, some of them won't have the opportunity to
20 defend themselves, and some of whom haven't been
21 publicly outed by anyone as being beneficiaries of a
22 scheme or who are not beneficiaries of a scheme. There
23 are a lot of kids who, sort of at the beginning, or
24 parents who at the beginning, you know, plotted the
25 Singer events but sort of withdrew for a variety of

1 reasons. So it would unfairly impact a lot of those
2 children and parents.

3 THE COURT: So I don't know how to deal with
4 so many defense counsel at once, but what if we altered
5 this to say, um, with respect to the defendant -- solely
6 with respect to the defendant or the defendant's family
7 members, and you could use materials that do not solely
8 reference you if you redacted them? I'm seeing some
9 nods.

10 Yes?

11 MR. BEIRNE: Your Honor, I think that does
12 sound reasonable. I will -- just responding to
13 Mr. Rosen, I will say there's a mechanism built into
14 this suggested paragraph that deals with exactly the
15 issue that Mr. Rosen raised, and we are, as you noted,
16 all concerned with the privacy of our own materials and
17 we don't want anyone but the parents or the defendant to
18 whom this stuff relates have any ability to disseminate
19 it or use it beyond the strict controls of the
20 protective order.

21 In the event that there are communications such as
22 the one Mr. Rosen referenced -- and again we haven't
23 seen any of this stuff yet, um, there is a mechanism
24 here for Mr. Rosen and the government to designate
25 materials that they think, while perhaps meeting the

1 definition of "primary materials," should remain subject
2 to the protective order, and then -- and then we have
3 the right to challenge it. But it is self-effectuating
4 that if he designates it, it is subject to the
5 protective order.

6 THE COURT: My only concern -- I think that's
7 a point well-taken, but my only concern with that is
8 putting the burden on the government to protect your
9 client's children, and if something slips through or if
10 someone misconstrues this, and then it's the
11 government's fault that someone has used it when really
12 the harm is going to be towards the kids.

13 So could I ask that you go back to the drawing
14 board on this paragraph, and I know it's a lot of
15 parents -- excuse me, a lot of defendants involved, but
16 let's try within the next 48 hours to circulate --
17 Mr. Rosen, I'll let you draft, um, that, and let's just
18 try to put, um -- "that relate to any action taken by an
19 alleged co-conspirator solely with respect to the
20 defendant," and, um, otherwise redact it. And I mean I
21 wonder if it would make sense once say you get the
22 discovery and you want your discovery to be, um,
23 considered primary -- certain discovery to be "primary
24 materials" for your defendant, that you simply, um,
25 decide what those are, notify the government, and give

1 the government a certain period of time to disagree with
2 you, because I think that would allow each defendant to
3 make sure their interests are protected and not put the
4 whole burden of that on the government.

5 MR. BEIRNE: Your Honor, if you might give
6 defense counsel sort of on that, you know, 2 minutes to
7 talk, I would bet we could come to an agreement and then
8 perhaps the Court, um, could enter an order. We can
9 supply it this afternoon. So as not to delay discovery
10 any further.

11 THE COURT: Great.

12 MR. ROSEN: It's not going to delay discovery.
13 I mean we have to -- I don't think like two days would
14 delay discovery. Discovery -- the clock starts today
15 with the arraignment. So nothing's going to delay it,
16 your Honor.

17 THE COURT: So why don't we do this. After
18 this hearing I'll ask defense counsel to stay for a few
19 minutes, figure out what you can agree to, and then
20 designate someone of you to negotiate with Mr. Rosen and
21 circulate something, and we'll just all agree you're
22 going to get back immediately if you can. Because the
23 sooner you get back to the government, the sooner I'll
24 enter the order, et cetera.

25 MR. BEIRNE: Thank you, your Honor.

1 THE COURT: And I also would just say I know
2 these protective -- you have to be very cautious about
3 the wording of these protective orders, but I think we
4 can all agree here that with the sensitive information
5 that's going to be released about the children involved
6 in this litigation and not involved in this litigation,
7 it's in everyone's interest to protect that information
8 about other people's children. And so I would just urge
9 all defense counsel to be very very cautious in your
10 filings and in your dissemination of the materials.
11 Once the primary materials click in for each defendant
12 and they belong to you and you can use them, I do think
13 it's really on you to make sure you're not disseminating
14 information -- you know personal information about other
15 people's children, right? And I'm seeing a lot of nods.

16 Okay, so I this is doable and, um, it has worked
17 out very well. And I'll sign whatever you agree to.
18 Although I do have a question. And on the last page,
19 Page 4, it says "Further ordered, discovery materials
20 falling within the following categories shall be filed
21 with the Court for the purposes of litigation under
22 seal," and it says "this does not apply to information
23 in legal briefs or memoranda." And I'm just not sure
24 what that means.

25 Yes?

1 MR. ROSEN: It was referring, sorry, to the
2 part of the negotiation, I think more with the, um, the
3 Ernst, um, group of defendants. It really just maybe
4 didn't have to -- the redaction issues still apply, we
5 still have to redact out names and things like that.
6 But we no longer -- we didn't want to -- we wanted to
7 make it clear that the briefing itself, which could
8 contain information derived from the discovery
9 materials, doesn't have to be filed under seal.

10 THE COURT: Okay, so but you're still -- okay,
11 but it says "It shall be filed with the Court, for the
12 purposes of litigation, under seal, any reference to a
13 child." I mean --

14 MR. ROSEN: The actual discovery material.

15 THE COURT: I see.

16 MR. ROSEN: Like if you're attaching say to
17 your brief Exhibits 8 through 12 e-mails and things like
18 that, that must be filed under seal. But the brief
19 itself is just -- you know so that there is obviously
20 disclosure, we're not doing this all under seal, it
21 would not be filed under seal. I believe -- and maybe
22 it's poorly worded, I'm sure we could change it, but
23 that obviously -- that any information about particular
24 children, particularly those, you know, not named, would
25 be, you know, either redacted in some way or, um, you

1 know we could file, you know, it sort of blacked out and
2 then we could file another brief, you know, under seal
3 containing the information.

4 THE COURT: Okay. And I think I would just
5 say to this, um, obviously the goal is to file as little
6 under seal as possible because we do want to keep the
7 proceedings public, so perhaps, um, if things could be
8 redacted rather than filed under seal, that's great.
9 But if you're attaching whole portions of the discovery
10 materials to some filing for some reason, then you can
11 certainly try to file them under seal. But let's use
12 the use of filing things under seal judiciously because
13 I do think it's, um -- you don't want things just
14 wholesale under seal unless they have to be, right?
15 Okay.

16 Okay. So I'll just wait for, um, a final
17 protective order to be filed.

18 And so just to ask the government, how does 30
19 days sound for the provision of the discovery now?

20 MR. ROSEN: It's definitely doable, your
21 Honor. We will, um -- I mean I was hoping to do it
22 sooner actually. It sort of depends on the, um, we're
23 just reproducing some of the hard drive that we've
24 passed out to prior --

25 THE COURT: Okay, so we'll say, um, May 30th

1 is the new discovery deadline. And if the government
2 can produce even partial discovery before that,
3 obviously that would be great, whatever you're able to
4 produce.

5 MR. ROSEN: We will, your Honor.

6 THE COURT: Okay. So we also --
7 Anything else about that from anyone?

8 MR. BEIRNE: No, your Honor. Thank you.

9 THE COURT: Okay, I'll just take that as a
10 collective "No."

11 Okay. So then we also have, um, the motion to
12 suspend discovery practice. And I'll just say I'm
13 really disinclined to do this. I certainly understand
14 why Mr. Schumacher filed his motion when he did. I also
15 understand that other, um, litigants may wish to examine
16 their discovery before joining in that motion or filing
17 one of their own.

18 And I'm just wondering, Mr. Schumacher, if you
19 would like to perhaps withdraw your motion? You don't
20 have to say this now, but withdraw your motion without
21 prejudice to refile and that would kind of, um, reset
22 the clock on that, and then after the discovery, maybe
23 on June 3rd, we'll see how much time do people want to
24 review the discovery and set a, um, a schedule for that.
25 But that's completely up to you.

1 MR. SCHUMACHER: Understood, your Honor. I'm
2 disinclined to do that, respectfully, your Honor, of
3 course this is a delicate line to walk and there's a
4 number of interests that we're trying to balance, and
5 that's why we didn't take a position, one way or the
6 other, on the other defendants' motion. But we're not
7 inclined to withdraw, but of course we understand the
8 gravamen of the motion for the defendants. And if your
9 Honor's inclined to suspend, um, ruling on our motion,
10 then of course we would understand that and abide by it.
11 But I think we're not inclined to withdraw the motion at
12 this time.

13 THE COURT: Okay. So it will need to go up to
14 the District Court for a decision, that's not something
15 I would rule on.

16 So when is or was the government's response due?

17 MR. ROSEN: It would be due today, your Honor,
18 so if we could just suspend that until after the
19 District Court rules, it would be much appreciated.

20 THE COURT: So the District Court rules on
21 what?

22 MR. ROSEN: If you state it has to go up to
23 the District Court.

24 THE COURT: Sure. I mean typically what would
25 happen in -- before me is someone files a motion to

1 dismiss and I would set a schedule for the opposition
2 and the reply, I mean it's ripe, it goes up to the
3 District Court for a date.

4 MR. ROSEN: Right.

5 THE COURT: So, um -- I can't dismiss a
6 criminal case, I don't have that authority.

7 MR. SCHUMACHER: That's fine, your Honor. I
8 was under the impression that under the local rules,
9 just as Mr. Rosen said, 14 days to respond, we
10 understood that the response was due today. We
11 understand that there's this other motion out there that
12 could affect how that motion is resolved, but I'm not
13 frankly certain what impact the other motion has on
14 their opposition to our motion to dismiss.

15 THE COURT: Okay, you're talking about the
16 motion to suspend?

17 MR. SCHUMACHER: Correct.

18 THE COURT: Yeah. All right.

19 So I'm happy to suspend the deadline for your
20 opposition and then that would effectively delay your
21 motion being sent up. So why don't I give you 90 days
22 to file your opposition, and we can revisit that.

23 MR. ROSEN: Thank you.

24 THE COURT: Okay.

25 Is that all right with you?

1 MR. SCHUMACHER: Understood, your Honor, yes.

2 THE COURT: Okay.

3 All right. So anything else we need to do today?

4 (Silence.)

5 MR. ROSEN: Nothing from the government.

6 THE COURT: No. All right. So thank you all
7 very much and we'll see you June 3rd.

8 THE CLERK: The Court's in recess.

9 (Ends, 11:00 a.m.)

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes,
before Magistrate Judge M. Page Kelley, on Monday, April
29, 2019, to the best of my skill and ability.

/s/ Richard H. Romanow 05-01-19

RICHARD H. ROMANOW Date